

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
V.)	Criminal No. 19-322
)	
GALEN GRAY)	

DEFENDANT'S MEMORANDUM IN AID OF SENTENCING

AND NOW, comes the defendant Galen Gray by his attorney, and with respect to the above-captioned matter, he represents the following:

1. Galen Gray pled guilty to an Information on November 20, 2019. That day, he was released on bail, pursuant to an Order Setting Conditions of Release.
2. The sentencing hearing was originally scheduled to occur on April 22, 2020. But as a result of the ongoing COVID-19 pandemic, that hearing was continued – Galen Gray having not consented to proceed by video-conferencing for that hearing.
3. On August 12, 2021, the Court conducted a telephone status conference with respective counsel for the parties.
4. During that conference, the sentencing hearing was scheduled to occur on October 6, 2021. As a result of the matters which are spelled out in the following paragraphs, the sentencing hearing has since been continued until December 8, 2021 at 9:30 a.m.

5. During the August 12, 2021 conference, the attorney for the government reported that the government – at the sentencing hearing – would be calling a police officer as a witness.

6. In connection with the substance of that officer's anticipated testimony, the attorney for the government – early in September of 2021 – provided undersigned counsel with certain documents, including affidavits and reports, which – in turn – undersigned counsel has reviewed, not just with Mr. Gray, but also with investigators from the Office of the Federal Public Defender, i.e., investigators of both the "traditional" and "information technology" ("IT") kind.

7. The contents of those affidavits and reports tend to prove that Galen Gray accessed the internet in the months since February of 2020, that month being when the Court modified the Order Setting Conditions of Release, barred Galen Gray's access to the internet, and eliminated the Condition which allowed that access, so long as it was monitored by the Pre-trial Services office.

8. The affidavits and reports further tend to prove that some of those instances of access to the internet included access to images depicting the sexual exploitation of minors.

9. As undersigned counsel files the within Memorandum, the traditional and "IT" investigators of the Office of the Federal Public Defender are coordinating the immediate interview of a lay person who may provide information which is pertinent to the circumstances which inform the various instances of internet access which are itemized in the affidavits and reports.

10. Those various instances of access will be a subject of the government's presentation at sentencing, both in written form in advance of the December 7, 2021 hearing, and in spoken form during that hearing.

11. Instead of herein addressing the issues of fact and law which arise with the instances of internet access, beginning since the modification of the bail condition, undersigned counsel will address those issues a) in the Reply which is due on November 15, 2021, and/or b) in a Supplement to the within Memorandum.

12. At the August 12, 2021 telephone status conference, undersigned counsel reported that the people who would accompany Galen Gray and be physically present at the sentencing hearing would include his mother Judith Gray, his father Dennis Gray, and a psychologist named Lawrence Sutton.

13. When Dr. Sutton and undersigned counsel conferred by telephone on November 5, 2021, they discussed – among all else – a) the issues of fact and law which arise from the instances of internet access, and b) the manner in which the resolution of those issues will inform the substance of Dr. Sutton's testimony, and the substance of his anticipated Report, the completion of which has been deferred pending the resolution of those issues.

14. Furthermore, the resolution of those issues will also inform a) the substance of the Motion for Downward Variance which undersigned counsel will file on behalf of Galen Gray, and b) the terms of Galen Gray's allocution during the sentencing hearing.

Respectfully submitted,

s/ Thomas Livingston

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